Dec #324

Supreme Court of the United States

OCTOBER TERM, 1940

No. 323

AMERICAN NATIONAL BANK OF NASHVILLE, TENNESSEE,

Petitioner,

versus

CITY OF SANFORD, FLORIDA, ET AL.,

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals of the Fifth Circuit.

AMERICAN NATIONAL BANK OF NASHVILLE, TENNESSEE,
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TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

I.

Petitioner, American National Bank of Nashville, Tennessee, seeks a **writ of certiorari** to the United States Circuit Court of Appeals, Fifth Circuit, to review its judgment rendered May 31, 1940 (R. 164-170), rehearing refused July 8, 1940, 112 Fed. (2d) 435, affirming an order of the United States District Court for the Southern District of Florida (R. 153). This application is made prior to August 15, 1940.

II.

Jurisdiction of this Court is asserted under Judicial Code §240 and §262, as amended, U. S. C. A. Title 28, Sections 347 and 377; Chapter IV, Sec. 24(c) Bankruptcy Law, as amended (Chandler Act), U. S. C. A., Title 11, Sec. 47, and Rule 38 of this Court.

239 U. S. 11, *Central Trust v. Lueders.*
191 U. S. 115, *Holden v. Stratton.*

III.

The statute of the United States, the application and constitutionality of which are in question is Section 83(j) of the Municipal Bankruptcy Act, as amended, 11 U. S. C. A. §403.[1]

IV.

Summary and Brief Statement. The facts are that on February 1, 1937, the City of Sanford proposed to its bondholders a **plan of** voluntary adjustment, which 87% of those bondholders accepted unconditionally, surrendering their old rights and acquiring new ones. Subsequently, in January, 1939, the City proposed a **plan of composition** and sought to coerce the non-assenting bondholders into it by using the consents of the bondholders who had refunded and who were unaffected by the **plan of composition.** The questions sought to be reviewed are:

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(1) 83(j):
"The partial completion or execution of any **plan of composition** as outlined in any petition filed under the terms of this title by the exchange of new evidences of indebtedness under the plan for evidences of indebtedness covered by the plan, whether such partial completion or execution of such **plan of composition** occurred before or after the filing of said petition, shall not be construed as limiting or prohibiting the effect of this title, and the written consent of the holders of any securities outstanding as the result of any such partial completion or execution of any **plan of composition** shall be included as consenting creditors to such **plan of composition** in determining the percentage of securities affected by such **plan of composition.**"

(a) Can the recent amendment designated as 83(j) of the Municipal Bankruptcy Act (11 U. S. C. A. §403) be construed as applying not only to securities issued under a partially completed **"plan of composition"** in which the securities issued are necessarily issued and received contingently upon the completion of the entire plan so that if the plan is not completed the acceptors are entitled to the return to the *status quo ante* and therefore always remain in the same class with the non-assentors, but also to securities issued under a **plan of voluntary adjustment** in which the securities issued are received and accepted irrevocably and unconditionally, regardless of the completion of the plan in which the return to the *status quo ante* is expressly prohibited by the State law so that acceptors immediately step out of the class of non-assentors?

(b) If 83(j) is construed as permitting persons who under a plan of voluntary adjustment irrevocably accepted "refunding bonds", carrying different and less rights from "old bonds" prior to the adoption of that statute, to reduce the rights of the "old bonds" against the will of the holders of such "old bonds", does it not deny due process and go beyond the limit of constitutional legislation?

Petitioner contends:

(1) That the decision of the Court of Appeals that "nothing in this acceptance prevents the City and the acceptors from undoing the whole plan" (voluntary adjustment plan of Feb. 1, 1937, R. 23) is in direct conflict with (a) the statutes of Florida, (b) the decisions of the Supreme Court of Florida, (c) the City charter of Sanford and (d) the express provisions of the **"plan of voluntary adjustment".**

(2) That when 87% of the bondholders of City of

Sanford unconditionally accepted "refunding bonds", with rights different from the old bonds, they placed themselves in a different classification from the holders of "old bonds", their bonds were payable from a sinking fund not available to the "old bonds", 193 So. 297, *State Ex Rel Garland vs. City of West Palm Beach.*

(3) That 83(j) is not applicable to the case at bar because:

(a) 83(j), although only some ten lines long, repeats five times that its application is restricted to a partially completed **plan of composition,** and a partial completion of a **plan of composition** is vastly different from a partial completion of a **plan of voluntary adjustment,** in which the securities in this case were issued.

(b) 83(j) authorizes the use of the "written consent of the holders of any securities outstanding as the result of any such partial completion or execution of any plan of composition." The securities whose consent is sought to be used in this case were not the result of the partial completion or execution of a **plan of composition.** The difference is vital. Securities accepted in partial completion of a **plan of composition** are accepted with the understanding that on non-completion of the plan, the security holder returns to the *status quo ante,* that is to say, he remains at all times in the same class with the non-assenting security holders. The securities in this case were the result of the partial completion of a **plan of voluntary adjustment.** They were accepted unconditionally and irrevocably. By accepting them, the receivers placed themselves in a different class from the non-assenting security holders. Under the State law, they are expressly prohibited from being returned to the *status quo ante.*

(c) 83(j) does not purport to and does not authorize coercion by creditors of a class whose

rights **are not** affected by a proposed **plan of composition** upon creditors whose rights **are** thereby materially affected. In this case such coercion is being exercised.

(d) 83(j) is not applicable because the plan proposed must be considered either as of date February 1, 1937, in which case it was not a **plan of composition,** because: (1) as there was no Municipal Bankruptcy Act in effect on February 1, 1937, it could not have been a **plan of composition** under the Bankruptcy Act, (2) it did not contemplate the submission to or approval by any court, (3) it did not contemplate coercion of the minority and (4) it did not contemplate collective action, but individual action; or else as of date January 28, 1939, in which case those bondholders who had already accepted the **plan of voluntary adjustment,** and unconditionally surrendered their **"old bonds"** were not affected by the plan, and 83(j) does not purport to change those provisions of the Act which require the consent of 51% of the bondholders affected by the plan.

(e) 83(j) should not be construed as having retroactive application to securities received and rights abandoned before its adoption.

(4) That if 83(j) be construed as applicable to the case at bar and as authorizing creditors whose rights are unchanged by a **plan of composition** to compel acceptance of that plan by creditors whose rights are materially curtailed by that plan, it is null and void as being in violation of the provisions of the Federal Constitution.

V.

The questions presented are as follows:

In 1937 after the first Municipal Bankruptcy Act had been declared unconstitutional (298 U. S. 513, *Ashton*

case) and before the adoption of the present Municipal Bankruptcy Act (304 U. S. 27, *Bekins* case) or Section (j) thereof, the City of Sanford, Florida (R. 23) offered to its bondholders, or **any of them who chose to accept it,** regardless of acceptance or rejection by the others, a **plan of voluntary adjustment** under which the accepting bondholders were to surrender and cancel their "old bonds" and coupons and accept new bonds, providing for certain reductions of future interest and scaled down by the elimination of the past due interest coupons. This plan was not and **could not have been a composition** under the Bankruptcy Act, since there was no Bankruptcy Act in existence when it was offered and since it was purely voluntary and contemplated no compulsion of non-assentors. Some 87% of the bondholders accepted this offer; surrendered and cancelled their "old bonds" and coupons unconditionally and irrevocably and accepted in lieu thereof new bonds which did not include the past due coupons. (R. 2) The validity of these new bonds was established by decision of the Supreme Court of Florida on March 16, 1937 (R. 3) *State v. City of Sanford*, 174 So. 339. The Florida law, as construed by the Supreme Court of Florida, prohibits the restoration of bondholders who accept such a voluntary adjustment and surrender their "old bonds" from being restored to their former status.[1] (Unfortunately, the Circuit Court of Appeals fell into

(1) Section 8, Chapter 15,772, laws of Florida, 1931.
This Section permits bonds to be exchanged "for not less than an equal principal amount and for accrued interest of debts to be retired thereby".
Section 14 provides that:
"the principal and accrued interest of the refunding bonds shall not exceed the amount of the obligations refunded".
190 So. 774, City of Miami v. State:
"When bonds are purchased for redemption, cancellation and retirement, interest thereon should be paid only to the date of delivery, and all current and future interest coupons that should be thereon should be delivered with the refunded bonds, and both bonds and coupons should be duly listed of record and cancelled and **permanently retired from circulation, or any other use whatever.**"

error on this point and believed erroneously that the Florida law permitted the restoration of the *status quo ante.* Vid. *infra,* p. 12).

The City charter and the **voluntary adjustment plan** contained similar inhibitions which were accepted by the assenting bondholders.[2]

Thus at the date of the adoption by Congress of the second Municipal Bankruptcy Act, the municipal indebtedness of the City of Sanford really consisted of two series of bonds, **first** outstanding "old bonds" and **second,** outstanding "refunding bonds". **The rights of the two series were materially different.** With its indebtedness in this position, the City of Sanford after the adoption of the second Municipal Bankruptcy Act (Chandler Act) and after the adoption of the amendment thereof contained in Section 83(j) *supra* filed a petition (R. 1-81, incl.) for a composition of its debts under Chapter 9 of the Chandler Act. This **plan of composition** did not propose to change in any manner whatever the rights of the holders of the **"refunding bonds"** as they then existed, but did propose to change materially the rights of the holders of the **"old bonds"** who had refused to refund. The Chandler Act[1] requires the bankruptcy petition to

(2) Charter City of Sanford, Chapter 9897, laws of Florida, 1923 (Special Acts, Vol. 2), Section 123.
City of Sanford's voluntary adjustment offer (R. 41):
"Section 6. Upon delivery of the refunding bonds in exchange for outstanding bonds, all past due coupons, if any, shall be detached from the refunding bonds and cancelled by the City, and all unmatured coupons shall be attached thereto."
Page 46:
"Section 15. The refunding bonds authorized hereby when executed shall be delivered to the holders of the outstanding bonds to be refunded thereby and/or the holders of judgments in exchange for and upon surrender of an amount of such bonds and/or the satisfaction of any judgment obtained upon a principal amount of such bonds equal to the face amount of the refunding bonds exchanged therefor."
See also R. 3, 7, and 75.

(1) The Chandler Act contains the following provisions:
USCA Title 11, §402
"The term 'security affected by the plan' means a security

show that creditors of the petitioner owning not less than 51% in amount of the securities **affected by the plan** have accepted it in writing. The City of Sanford in an effort to meet this jurisdictional prerequisite attached to its petition the written consents of a large number of the holders of "refunding bonds". By stipulation, only one such consent has been printed (R. 82). The consents so obtained do not amount to 51% of the non-assenting old bondholders who **are** materially affected by the plan (not one single non-assenting old bondholder has consented) but they do amount to 51% of the total outstanding bonded indebtedness, including the holders of the "refunding bonds" who **are not** at all affected by the plan, and the holders of the "old bonds" who **are** materially affected by the plan.

To this petition, the American National Bank of Nashville, petitioner herein, and two other non-assenting bondholders made timely objection, challenging the sufficiency of the petition as a matter of law and asserting that Section 83(j) of the Bankruptcy Act was not applicable, and if held applicable, was unconstitutional, and asking that the Attorney General of the United States be notified, which was done, and that office filed a brief and made an oral argument herein. The Bank moreover asserted (R. 109, *et seq.*) that it was the holder of more

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as to which the rights of its holder are proposed to be adjusted or modified materially by the consummation of a composition agreement."

§403:

"The petition shall state that a plan of composition has been prepared, is filed and submitted with the petition, and that creditors of the petitioner owning no less than 51% in amount of the securities affected by the plan (excluding, however, any such securities owned, held or controlled by the petitioner), have accepted it in writing. * * *

"No creditor shall be deemed to be affected by any plan of composition unless the same shall affect his interest materially, and in case any controversy shall arise as to whether any creditor or class of creditors shall or shall not be affected, the issue shall be determined by the judge, after hearing, upon notice to the parties interested."

than 50% of the unrefunded or "old bonds" which alone were affected by the proposed plan,[1] that it had not consented to the plan and that the City's petition should be dismissed for failure to show, as required by the statute, that the 51% of the securities affected by the plan had accepted it in writing. This application to dismiss, after hearing before a Master, was denied by the District Court (R. 153) and from the affirmance of this decree by the Fifth Circuit Court of Appeals, this application for certiorari is prosecuted.

The Bank contends:

(a) That the decision of the Court of Appeals that "nothing in this acceptance prevents the City and the acceptors from undoing the whole plan" (voluntary adjustment plan of February 1, 1937, R. 23) is in conflict with (a) statutes of the State of Florida, (b) the decisions of the Supreme Court of Florida, (c) the City charter of Sanford and (d) the express provisions of the **plan of voluntary adjustment.** *Supra* pp. 6 and 7.

(b) That the amendment contained in 83(j) of the Bankruptcy Act cannot be held to justify the use of the consents of the holders of unaffected "refunding bonds" received in a **plan of voluntary adjustment** to coerce the holders of "old bonds" into acquiescence in a subsequently filed **plan of composition** for the reasons:

(1) That 83(j), although only some ten lines lines long, repeats five times that its application is restricted to the partial completion of a **plan of composition,** a term which has a well-defined

(1) Petitioner's claim was for $152,000 and the total unscaled and unrefunded old bonds outstanding amounted to the principal sum of $246,000.

meaning in bankruptcy parlance,[1] and that the partial completion of a **plan of composition,** which alone is mentioned in the statute, is very different from the partial completion of the **plan of voluntary adjustment,** in which the securities in this case were received.

(2) That 83(j) authorizes the use of the "written consent of the holders of any securities" outstanding as the result of any such partial completion or execution of any **plan of composition** and the securities outstanding in the present case were not securities accepted in partial completion of a **plan of composition,** in which case their final retention would necessarily have been dependent on the final completion of the composition, but were securities which were unconditionally and irrevocably accepted by each individual bondholder as a result of an offer of **voluntary adjustment.** There is a vast difference between the two classes of securities. In a **plan of composition** not individual, but collective, action is contemplated. The acceptance of the securities is contingent and conditional upon the entire plan becoming operative. In the **plan of voluntary adjustment,** each bondholder acted for himself and finally surrendered his "old bonds" and received his new bonds inde-

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(1) 96 Fed. (2) 85, In Re: City of West Palm Beach:
"The Municipal Bankruptcy Act speaks uniformly of a 'plan of composition'. In bankruptcy matters, composition has a special meaning, to-wit: a settlement or adjustment which is enforced by the court on all creditors after its acceptance by a required majority. A proposed adjustment out of court is not a plan of composition, but may become one by being presented to the court. That the present adjustment was proposed and largely accepted before the Act was passed and of course not as a plan of composition, would, if it remained executory, possibly not prevent its presentation for enforcement under the Act. * * * Whether the plan must have been offered and accepted as a plan of composition rather than as a plan of voluntary adjustment we need not decide since the plan with its acceptance became incapable of presentation as a composition, because it had been largely executed."
263 Fed. 926, In Re: Bickmore Shoe Company.
17 Fed. Cases 9479, In Re: Meriam.
53 Vermont 491, First National Bank vs. St. Albans.
8 Corpus Juris Secundum Bankruptcy, Sec. 653.

> pendently of the action of any other bondholder. In the **plan of voluntary adjustment,** individual bondholders by going in or staying out were able to achieve different results. In a **plan of composition,** it is contemplated that the result to all bondholders shall be uniform. The consent is not final, but is contingent.[1]

That the consents given by the assenting bondholders prior to the adoption of 83(j) to the **voluntary adjustment plan** were not consents to a **plan of composition** within the meaning of Section 83(j) of the Bankruptcy Act affirmatively appears from the following:

(a) The original **voluntary adjustment** offer was made by the City of Sanford in 1937; i. e., at a time when there was no Bankruptcy Act in effect and when, therefore, there could not possibly have been formulated a **plan of composition** within the meaning of the Bankruptcy Act.

(b) The **voluntary adjustment plan** (R. 23, *et seq.*) did not contemplate submission to any court.

(c) It did not contemplate coercion of the non-assenting minority.

(d) Under the Florida refunding statute, Section 2, the **voluntary adjustment plan** was offered and might have been finally accepted by any individual bondholder, regardless of the action of any other bondholder, and such offer was actually finally accepted voluntarily by some 87% of the outstanding bondholders who surrendered their original bonds and accepted new scaled-down bonds, regardless of the action or non-action of all other bondholders. There was nothing contingent about the

(1) 263 Fed. 926, In Re: Bickmore Shoe Co.
"A composition is of no avail unless confirmed by the court after a judicial hearing. It results not alone in a contract between those who have assented, but in a judgment imposing its terms upon those who have not assented", etc.

acceptance. Each assentor agreed irrevocably for himself, surrendered his "old bonds" and coupons unconditionally and irrevocably, and thereby completed his individual independent settlement with the City. The failure of these consents to be consents to a **plan of composition** is most important since (1) Section 83(j) is specifically and meticulously confined to a partially completed **plan of composition,** and (2) a comparison of the decisions of this Court in the *Ashton* case (298 U. S. 513), in which the first Municipal Bankruptcy Act was held unconstitutional, with that in the *Bekins* case (304 U. S. 27), where the second Bankruptcy Act was held constitutional, indicates that the distinction between the two statutes consists largely of the fact that the old Bankruptcy Act was bottomed on Chapter 9, which permits the full surrender of contract rights under **the bankruptcy power** (a compulsory surrender not available to the States), whereas the second Bankruptcy Act was bottomed on Chapter 10, **the composition statute,** which contemplates a compromise settlement based upon the **consent** of the majority of the creditors similarly situated.

(3) That under the Florida law, as construed by the Supreme Court of that State, when certain bondholders of the City of Sanford surrendered their "old bonds" and accepted "refunding bonds" under the **voluntary adjustment plan,** they irrevocably and unconditionally shrunk their claims to lower figures and acquired different rights in different funds, and thus came into a classification different from that of the holders of the original "old bonds". *State ex Rel Garland vs. City of Palm Beach,* 193 So. 297. They thereby lost the power of coercion over the holders of the "old bonds". 83(j) does not contemplate the coercion of one class of creditors by

another class dissimilarly situated.[1] It contemplates the completion of a partially completed **composition,** in which certain of the creditors of a designated class had already accepted a shrinkage of their claims, their acceptance being contingent upon all claims of that class being shrunk accordingly. In such a case, coercion was authorized by the statute because the creditors coercing remained in the same class with those being coerced until the contingency happened, and the **plan of composition** was finally concluded. In the case at bar, the status of the assenting bondholders changed unconditionally and irrevocably in 1937 when some 87% surrendered their "old bonds" free of any contingency, and accepted their new bonds unconditionally and irrevocably. They became creditors holding debts of a different class for a smaller amount, and their claims for the purposes of any subsequently submitted **plan of composition** must be considered as they existed when that **plan of composition** was offered; namely, January 28, 1939, and not as they had previously existed before being scaled-down and declassed in 1937. So, too, the question of the solvency or insolvency of the City of Sanford and the ability of that City to pay its debts must be determined upon the basis of the claims against the City as they existed at the date upon which the **plan of composition** under the Bankruptcy Act was presented to the Court (January 28, 1939), and not on the basis upon which they may have existed at the date of the proposal of the **voluntary plan of adjustment,** (early 1937).

(4) That 83(j) is not applicable because the plan proposed must be considered either as of date February 1, 1937, in which case it was not a **plan of composition,**

(1) 82 Fed. (2) 186, In re: Nine North Church St.
96 Fed. (2) 85, In re: City of West Palm Beach.
109 Fed. (2d) 313, St. Louis Union Trust Co. v. Champion Shoe Machinery Co.
87 Fed. (2d) 395, Texas Hotel Co. v. Waco Dev. Co.

because (a) as there was no Municipal Bankruptcy Act in effect on February 1, 1937, it could not have been a **plan of composition** under the Bankruptcy Act, (b) it did not contemplate the submission to or approval by any court, (c) it did not contemplate coercion of the minority and (d) it did not contemplate collective action, but individual action; or else as of date January 28, 1939, in which case those bondholders who had already accepted the **plan of voluntary adjustment** and unconditionally surrendered their **"old bonds"** were not affected by the plan and 83(j) does not purport to change those provisions of the Act which require the consent of 51% of the bondholders affected by the plan.

(5) That the rule long ago laid down and uniformly followed by this Court is that:

> "Words in a statute ought not to have a retroactive operation unless they are so clear, strong and imperative that no other meaning can be annexed to them or unless the intention of the legislation cannot be otherwise satisfied."(2)

and that when this rule is applied to the language of 83(j), it is plain that that section of the Bankruptcy Act was not intended to be retrospective or retroactive, or to go back beyond the date of the adoption of the statute, or to convert a voluntary, non-coercive, non-judicial **plan of adjustment** conceived and submitted before the passage of the amendment into a live **plan of composition** embodying coercive features and contemplating judicial action.

(6) That if 83(j) be construed as applicable to the

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(2) U. S. v. Heth, 3 Cranch 398, 413, 2 L. Ed. 479;
Crigler v. Alexander, 33 Gratt. (Va.) 677.
Seaboard Steel Casing Co. v. Trigg, 124 F. 75.
Shreveport v. Cole, 129 U. S. 36.
City R. Co. v. Citizens Ry. Co., 166 U. S. 557.
Auffm'ordt v. Rasin, 102 U. S. 620.
Holt v. Henley, 232 U. S. 637.
Arctic Ice Machine Co. v. Armstrong, 192 Fed. 114.
In Re: United States Restaurant & Realty Co., 187 F. 118.

case at bar and as taking away from the non-assenting holders of the "old bonds" their unscaled-down rights, and without the consent of the majority of said old scaled-down holders of "old bonds", reducing them to the level of the assenting and scaled-down bondholders, and be construed as permitting the consents of the scaled-down bondholders of "refunding bonds" to coerce the unscaled-down and different-righted holders of "old bonds" into being bound by a **plan of composition** to which such holders of "old bonds" have not consented, it is void as not permissible legislation which is incompatible with fundamental law and which deprives the unscaled-down holders of "old bonds" of due process, in violation of the protective provisions of the Constitution of the United States, particularly Amendment Five. If the statute baldly permitted some 4,000 holders of bonds for the principal sum of $1000 each by their votes to compel 240 non-assenting holders of bonds for the principal sum of $1040 each to accept a plan of composition which gave each of the 4,240 bondholders identical bonds of $1000 each, this Court would undoubtedly brand that statute as unconstitutional. Stripped of its camouflaging detail, that is precisely what the plan now before the Court contemplates doing. Petitioners' position is that this may not be done either (a) because 83(j) does not authorize it, or (b) because if 83(j) does authorize it, 83(j) is unconstitutional.

VI.

REASONS SUGGESTING NECESSITY FOR ISSUANCE OF WRIT

The following reasons indicate that the points involved in this case are sufficiently important to justify the issuance of the writ of certiorari:

(a) The questions involved are important questions

of Federal law arising under the recent amendments to the Federal Bankruptcy Act, which have not been but should be settled by this Court.

296 U. S. 280-287, *Del Vecchio v. Bowers.*

220 U. S. 547-548, *U. S. v. Rimer.*

257 U. S. 506-516, *International Railway v. Davidson.*

242 U. S. 430-434, *Furness, Withy & Co. v. Yangtsze Ins. Assn.*

306 U. S. 86-102, *Mackay Radio & Tel. Co. vs. Radio Corporation.*

166 U. S. 506-520, *Forsythe v. City of Hammond.*

The questions as to the construction, application, and constitutionality of Section 83(j) of the Bankruptcy Act directly affect a large number of municipalities and counties (under the very recent amendment to the Bankruptcy Act, being the Act of June 28, 1940, 438, 3rd Session, Public 669, 76 Congress, H. R. 9139, 11 U. S. C. A. 401) throughout the country which have partially completed their voluntary plans of adjustment and which are now undoubtedly awaiting a decision of this Court before proceeding further. There are at present at least four municipalities in Florida, one of which (the City of Homestead) is now a respondent in an application to this Court for a certiorari, which involves substantially similar questions, and a number in California which are in situations similar to the Cities of Sanford and Homestead, and there are a large number of counties in Florida which are similarly situated.

Moreover, the matter is of paramount importance to that large group of people constituting the investors and traders in municipal bonds, among whom perhaps the most important are the great nationwide life insurance companies whose portfolios are heavy with municipal bonds.

(b) The decision is in conflict with the decisions of the Supreme Court of Florida on a question of local law, as follows:

(1) In *State Ex Rel Garland vs. City of Palm Beach,* 193 So. 297, the Supreme Court of Florida held that the holders of refunding bonds, issued by a Florida municipality under the statute utilized in its voluntary refunding plan by the City of Sanford, had materially different rights from the rights of the holders of the non-assenting old bonds, in that, among other things, the holders of the old bonds could not enforce the payment of the principal and interest of those old bonds from money held in the sinking fund created for the refunding bonds under the provisions of the refunding statute. This necessarily conflicts with the decision here complained of, which holds that both the old bonds and the refunding bonds are in the same classification, so that the consents of the refunding bonds may be used to coerce the non-assenting old bonds.

(2) The decision of the Circuit Court of Appeals complained of is based upon the theory that the City of Sanford could have revoked its voluntary adjustment plan and could have reinstated the *status quo ante* as to the bonds which had accepted that plan. The Court said in part, 112 Fed. (2d) 437: (R. 168)

> "If the City and the assenting bondholders, because of failure to secure full consenting, concluded to revoke the plan and to restore the bonded indebtedness to its original condition, it could hardly be contended, we think, that appellant could assert a vested right to prevent their doing so."

and on page 438: (R. 169)

> "Nothing in the acceptance prevents the City and the acceptors from undoing the whole plan."

As we have pointed out *supra*, page 6, this ruling is in direct conflict with (a) the statutes of Florida, (b) the decisions of the Supreme Court of Florida, (c) the charter of the City of Sanford, and (d) the provisions of the plan of voluntary adjustment as propounded by the City of Sanford.(1)

(c) The decision is in conflict with the decisions of the Circuit Court of Appeals of other Circuits, as follows:

(1) As we have shown above, the decision here complained of gives a retrospective and retroactive effect to a Federal statute, in contravention of the general rule laid down in this Court in the case of *U. S. v. Heth*, 3 Cranch 398, the Circuit Court of Appeals of the Third Circuit in the case of *Arctic Ice Machinery Co. v. Armstrong*, 192 Fed. 114, and the decision of the Circuit Court of Appeals of the Second Circuit in *In Re: U. S. Restaurant & Realty Co.*, 187 Fed. 118, to the effect that:

> "Words in a statute ought not to have a retroactive operation unless they are so clear, strong and imperative that no other meaning can be annexed to them, or unless the intention of the legislature can not be otherwise satisfied."

(2) The ruling here that the holders of "refunding bonds", which will not be affected by the consummation of the plan, are in the same class as are the holders of "old bonds", which will be affected by the plan, and that the consent of the

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(1) Chapter 15,772, Florida Laws 1931, Section 8.
190 So. 774, City of Miami v. State.
Carlton v. State of Florida, et al., 192 So. 913
Chapter 9897, Laws of Florida 1923 (Special Acts Vol. 2) Sec. 123, R. p. 41 and 46, 3, 23, 75.

See also:
Texas Hotel Co. v. Waco Dev. Co., 87 Fed. (2d) 395.
Continental Ins. Co. v. La. Del. Ref. Co., 89 Fed. (2d) 333.

holders of "refunding bonds" can be counted as acceptors in order to coerce the holders of non-assenting "old bonds", is in conflict with the analogous ruling of the Circuit Court of Appeals of the Second Circuit in the case of *In Re: Nine North Church Street*, 82 Fed. (2d) 186.[1] Compare 96 Fed. (2d) 85-86, *In Re: City of West Palm Beach*. As shown *supra*, 83(j) may not be used as a justification for this conflict.

(d) The Circuit Court of Appeals has so construed the Federal statute as to make it so grossly unreasonable as to be incompatible with fundamental law. Such a construction makes the statute unconstitutional, as not permissible legislation in violation of the Fifth Amendment; and such a construction, coupled with a failure to declare the statute unconstitutional, is necessarily in conflict with the applicable decisions of this Court.

(1) As has been pointed out *supra*, page 7, the holders of "refunding bonds" are in no wise affected by the proposed plan. To permit them by their votes, over the protest of non-assenting holders of "old bonds", to take away from such holders of "old bonds" their substantive rights is beyond the scope of permissible Federal legislation.[1]

(2) So, too, the question of the solvency or insolvency of the City of Sanford, and the ability of that City to pay its debts must be determined upon the basis of the claims against the City as they existed at the date upon which the **plan of composition** under the Bankruptcy Act was presented to the Court (January 28, 1939) and not

(1) In the case of In Re: Nine North Church Street, the Court said:

"Before the debtor came into existence, some of the certificate-holders had consented to a reduction of their rights. The plan as proposed by the debtor did not further reduce these modified rights, while it did cut down the rights of those who had not cooperated in Gedex' proposition. Either there were two classes of creditors, with no consents from the second class (as required by §77B (e) (1), 11 U. S. C. A. §207 (e) (1), or

on the basis on which they may have existed at the date of the proposal of the **voluntary plan of adjustment** (early 1937). Arbitrarily using for that purpose the "refunding bonds" on January 28, 1939, not at the shrunken figures which had been irrevocably accepted at that date, but at the expanded figures of early 1937, is an invasion of the substantive rights of the non-assenting bondholders and deprives them of due process.

(e) The Circuit Court of Appeals has decided Federal questions in a way probably in conflict with the applicable decisions of this Court.

(1) *U. S. v. Heth*, 3 Cranch 398; 129 U. S. 36, *Shreveport v. Cole.*

(2) *Case v. Los Angeles Lumber Co.*, 308 U. S. 106.

(3) 186 U. S. 181, *Hanover Bank v. Moyses;*
295 U. S. 330, *R. R. Retirement Bd. v. Alton R. R.;*
137 U. S. 692, *Caldwell v. Texas.*

WHEREFORE, your petitioner respectfully prays that a writ of certiorari do issue out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals, Fifth Circuit, commanding that Court to certify and send to this Court for its review and determination on a day certain to be therein named, a transcript of the record and proceedings herein, and that the decree herein of the said Circuit Court of Appeals, Fifth Circuit, be reversed by this Honorable

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there was a single class of creditors, with no reduction made in the rights of some of these, those certificate holders whose rights were already modified."

See also:
St. Louis Union Trust Co. v. Champion Shoe Machinery Co., 109 Fed. (2d) 313, CCA 8th.
87 Fed. (2d) 395, Texas Hotel Co. v. Waco Dev. Co.

(1) Hanover Bank vs. Moyses, 186 U. S. 181:
"Congress may prescribe any regulations concerning discharge in bankruptcy that are not so grossly unreasonable as to be incompatible with fundamental law."
R. R. Retirement Board v. Alton R. R., 295 U. S. 330; dealing

Court, and your petitioner have such other and further relief in the premises as to this Honorable Court may seem meet and just.

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with the Retirement Act provision in favor of previously discharged railroad employees, the Court said:

> "This clearly arbitrary imposition of liability to pay again for services long since rendered and fully compensated is not permissible legislation. The Court below held the provision deprived the railroads of their property without due process and we agree with that conclusion. Here again the petitioners insist that the requirement is appropriate because they say it does not demand additional pay for past services, but expenditure 'for a present and future benefit through improvement of the personnel of the carriers'. But the argument ends with mere statement. Moreover, if it were correct in its assumption, which we shall presently show it is not, nevertheless, there can be no constitutional justification for arbitrarily imposing millions of dollars of additional liabilities upon the carriers in respect of transactions long closed on the basis of cost with reference to which their rates were made and their fiscal affairs adjusted."

Caldwell v. Texas, 137 U. S. 692:

> "and due process is so secured by laws operating on all alike and not subjecting the individual to the arbitrary exercise of the powers of government unrestrained by the established principles of private right and distributive justice."

See also:

Case vs. Los Angeles Lumber Products Co., 308 U. S. 106.

Kansas City Terminal R. R. Co. v. Central Union Trust Co., 271 U. S. 445.

Continental-Illinois Bank & Tr. Co. vs. C. R. I. & P., 294 U. S. 648.

Respectfully submitted,

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